Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pathfinder Motel & R.V. Park
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants for a monetary order as against the landlords for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement.

Both tenants and an agent for the landlords attended the hearing. Both parties provided evidentiary material prior to the commencement of the hearing, and each gave affirmed testimony. The parties were given the opportunity to cross examine each other on the evidence and testimony provided.

No issues with respect to service or delivery of documents or evidence were raised, with the exception of a missing page from the landlord's evidence package that the tenants did not receive. All evidence and testimony with the exception of that page has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Have the tenants established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement?

Background and Evidence

The first tenant testified that this month-to-month tenancy in a manufactured home park began on September 1, 2009 and the tenants still reside in a home on that site. Rent in the amount of $500.00 per month is currently payable in advance on the first day of each month and there are no rental arrears.

The tenants have provided a document similar to an invoice to itemize their claims against the landlords. They include:

- $2,376.00 for return of HST & PST charged by the landlord for 44 months;
- $180.00 for 2 electrical cords and a receptacle box;
- $360.00 for 2 loads of gravel;
- $288.00 for labour to spread the gravel;
- $100.00 for 2 circuit breakers and installation;
- $300.00 for labour for cleanup of sewer spillage from a plugged line;
- $600.00 for deductibles for damaged motor vehicles;
- $260.00 for cable vision charges;
- $868.59 for an estimate for paint and body damage to a pickup truck;

for a total of $5,332.59.

The tenant further testified that the landlord has charged HST or GST and PST on rental payments made to the landlord. The tenants have provided copies of numerous rent receipts, some in the amount of $500.00, some in the amount of $525.00, and some in the amount of $545.00. The $545.00 receipts show $25.00 GST and $20.00 PST. Some of the receipts do not specify what the amounts are for.

The tenant further testified that a tenancy agreement was signed by the tenants individually and on different dates but they did not receive a copy from the landlord. The tenant testified that the tenant's spouse signed one for $450.00 and the tenant arrived later and signed one for $545.00 per month.

Further, the landlord had told the tenants that the electrical system, being the power source in the park is very old but promised 30 amp service. In mid-March, 2011 the tenants hired and paid an electrician to install 30 amp breakers in order to obtain the 30 amp service they were promised at the outset of the tenancy.

During the spring/summer of 2012 the tenants were without power. The landlord had run over the power cord many times with the lawn mower and the power source burned out. The tenant showed the landlord the burned out box, but the landlord only shrugged. The ampage was not sufficient because the circuit breakers didn't have 30 amp, but had 2 15 amp circuits in the box. The tenant testified that the home is an RV and all RVs have 30 amp. The tenants hired an electrician to replace the outlet box and the tenants purchased a new special cord. The landlord promised to repay the tenants for the cords but did not, and the tenants claim $180.00 for the cords and receptacle box and $100.00 for the installation and cost of the 30 amp circuit breaker. No receipts for the costs have been provided.

The tenant described living in a mud hole, and the tenants offered to pay for half of a load of gravel to fill it in and would get a helper and the landlord agreed, but the landlord

refused when it came time to pay. The tenants have provided copies of receipts in the amount of $185.00 and $175.00 for the costs from a sand and gravel company.

The landlord gave the tenants back $1,000.00 for the payment of the taxes and gravel, but the tenant testified that the cheque specifies that it's for GST not gravel and the tenant believes more is owing.

In trying to empty the sewage holding tanks, the system backed up more than once causing sewer spillage on the ground. The tenant went to report a leakage to the landlord but no one was there, so the tenant called Roto Rooter who stopped at the office prior to attending the site. The landlord's wife attended the site with Roto Rooter representative, a plumbing company, who unplugged the pipes while the landlord's wife watched. The tenants claim $300.00 for their inconvenience and having to clean the area. The landlord paid the plumbing company but did not assist with the clean-up.

The tenant further testified that the side windows of their vehicles were damaged by the landlord's lawn mower. The landlord got a new lawn mower after shattering the window of one of the tenants' vehicles, but the landlord keeps the flap up with a bungee cord and rocks go flying. The landlord doesn't use the grass catcher and drives across the gavel which causes damage to the vehicles. The tenant testified that they are afraid to drive, and claim the deductible of $200.00 for each of the 3 times vehicles were damaged by the landlord's lawn mower.

The tenant also testified that cable vision was included in the rent at the commencement of the tenancy. The tenant changed the service from cable to a satellite dish, and claims that the landlord charged a fee for cable for 13 months at $20.00 per month and told the tenants it was because the dish used electricity.

The tenants also owned a 2012 pickup truck, and the landlord drove the lawn mower past and threw up rocks damaging the finish of the vehicle. The tenants have provided an estimate for repairs in the amount of $868.59.

The other tenant testified that Fraser Health told the landlord to re-do the septic about 3 months ago, but the landlord was too busy. The tenant was present the day after the septic over-flowed. The first time it happened, a Roto Rooter representative told the landlord the pump was too small. The landlord was told how to fix it and the cost, but the landlord's English is poor and he doesn't understand the language.

The tenant further testified that the electrical system is outdated. All RVs are 30 amp and the landlord has 2 x 15 amp service in the box. The tenants had 30 amp service

installed. The landlord kept promising, and “end of the month” was a common answer but it never happened.

The tenant further testified that the landlord had agreed to pay for half the gravel.

The tenant also questioned why they were paying more than other tenants in the park for their site.

The landlord’s agent testified that the tenants had applied for recovery of taxes, gravel, the 30 amp circuit, cable vision recovery and the deductibles for the windshields in a previous application for dispute resolution and all of those matters were settled prior to the hearing. A file number was provided.

The landlord’s agent further testified that another application for dispute resolution was filed by the tenants wherein they applied to cancel a notice to end tenancy issued by the landlord and a monetary order. A file number for that hearing was also provided.

The landlord’s agent also testified that a tenancy agreement was signed by the parties and does not know why the tenants would not have a copy. The landlord was ordered to provide a copy to the Residential Tenancy Branch by facsimile and provide a copy to the tenants as well. A copy was received prior to completing this Decision.

The landlord’s agent also testified that after the tenants had moved into the park, business got slow and the landlord was required to reduce rent for new tenants as an incentive to attract business.

Analysis

Firstly, I have reviewed the Decisions of the previous hearings. After hearing testimony, it would be totally improper for me to rule or decide on an issue that has already been heard and considered by another Arbitrator at dispute resolution under the *Manufactured Home Park Tenancy Act* or agreed to by the parties once an application for dispute resolution was filed.

The first hearing was cancelled, and in the landlord's agent testified that the matters applied for at that time were the claims for recovery of taxes, gravel, the 30 amp circuit, cable vision recovery and the deductibles for the windshields, which resulted in a settlement between the parties prior to the hearing date. The tenants do not dispute that testimony, and therefore, the tenants' application for monetary orders for those items is hereby dismissed without leave to reapply.

The other hearing was heard on May 2, 2013 and dealt with an application made by the tenants to cancel a notice to end tenancy for landlord's use of property and for a monetary order as against the landlords. The Decision determined that the landlord had issued the notice to end tenancy under the *Residential Tenancy Act* and not under the *Manufactured Home Park Tenancy Act,* and that the amount of notice that must be given by a landlord is different from one *Act* to the other, and the notice to end tenancy was cancelled at arbitration. During that hearing, the landlord had testified that the monetary order applied for by the tenants had been dealt with by way of an agreement, and the tenants were not legally entitled to bring that application again. The Decision on May 2, 2013 determined that the primary issue at that hearing was the notice to end tenancy and the monetary application was dismissed with leave to re-apply, however the Decision also states, "I further note there is a significant issue as to whether these issues have already been settled or not."

The issues that remain outstanding in the tenants' application before me are:

- $180.00 for 2 electrical cords and a receptacle box;
- $300.00 for labour for cleanup of sewer spillage from a plugged line; and
- $868.59 for an estimate for paint and body damage to a pickup truck.

In order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;

3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate, or reduce such damage or loss.

Further, the *Manufactured Home Park Tenancy Act* speaks specifically about responsibilities of landlords and tenants and about repairs and emergency repairs. The *Act* states that emergency repairs may be made by a tenant and claimed back from a landlord if all of the following conditions are met:

> (a) emergency repairs are needed;
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> (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs; and
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> (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

Also, a landlord may take over completion of an emergency repair at any time.

The *Act* also specifies that emergency repairs are: (a) urgent, (b) necessary for the health or safety of anyone or for the preservation or use of property in the manufactured home park, and (c) made for the purpose of repairing (i) major leaks in pipes, (ii) damaged or blocked water or sewer pipes, (iii) the electrical systems, or (iv) in prescribed circumstances, the manufactured home site or the manufactured home park. Further, if I find that one or more of the following applies:

> (a) the tenant made the repairs before one or more of those conditions were met;
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> (b) the tenant has not provided the account and receipts for the repairs;
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> (c) the amounts represent more than a reasonable cost for the repairs;
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> (d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted in the manufactured home park by the tenant;

then the landlord is not required to reimburse the tenant, and I must dismiss the tenants' application.

Having heard the testimony of the parties, and having heard nothing from the landlord's agent contrary to the testimony of the tenants, I find that cleaning the septic over-flow was necessary for the health or safety of anyone or for the preservation or use of property in the manufactured home park, and I find that the amount claimed by the tenants is reasonable. I also accept the testimony of the tenant that the landlord was told by Fraser Health to re-do the septic 3 months ago, and Roto Rooter also advised the landlord that the pump was too small. Although I am not satisfied that the tenants

have established that all conditions for emergency repairs were met, a landlord is required to provide and maintain the manufactured home park in a reasonable state of repair and to comply with housing, health and safety standards required by law. I find that the landlords failed to comply with the *Act,* and therefore, I find that the tenants have established a claim as against the landlords for $300.00.

With respect to the electrical cords and receptacle box, I have no evidence to substantiate the actual costs incurred by the tenants, nor am I satisfied that the tenants have established that the $180.00 expense was an emergency repair. Therefore, the tenants have failed to satisfy any of the tests for damages and the application is dismissed.

With respect to the repair estimate for the tenants' pickup truck, I have heard no testimony with respect to having the repairs completed through the tenants' insurance company. The parties agreed to a settlement for the deductibles for the first 3 instances of broken windows in vehicles, but I find that the tenants have not made such a claim for the pickup truck for the deductible but claim the full amount of the repair, and have not mitigated the loss. I find that the tenants have failed to establish element 4 in the test for damages and the application is dismissed without leave to reapply.

I am not satisfied, however, that the landlord has taken reasonable steps to ensure that damage is not caused to the vehicles and belongings of the tenants, including electrical cords. There is no testimony from the landlord's agent that disputes the tenants' testimony amounting to negligence by the landlord. I find that due diligence by the landlord is a material term of the tenancy and I order the landlord to comply with the *Act* and the tenancy agreement. In the event that further damage to property owned by the tenants is caused by the landlords' lawn mower or other equipment, or by neglect, the tenants will be at liberty to make a further application.

In summary, I find that the tenants have established a monetary claim as against the landlords for the sum of $300.00. Since the tenants have been partially successful with the application, the tenants are also entitled to recovery of the $100.00 filing fee for the cost of the application, for a total award of $400.00. I order that the tenants be permitted to deduct that amount from a future months' rent payable or otherwise recover the amount, at the discretion of the tenants. The balance of the tenants' application is hereby dismissed without leave to reapply.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants pursuant to Section 60 of the *Manufactured Home Park Tenancy Act* in the amount of $400.00. This amount may be deducted from a future month's rent or otherwise recovered, at the discretion of the tenants.

I hereby order the landlord to comply with the *Manufactured Home Park Tenancy Act* by ensuring the safety and ensuring due diligence respecting the personal property and the rented site of the tenants.

The balance of the tenants' application is hereby dismissed without leave to reapply.

This order is final and binding on the parties and may be enforced.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: July 26, 2013

Residential Tenancy Branch